M.R. 3140

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

Order entered February 6, 2013.

(Deleted material is struck through and new material is underscored.)

Effective immediately, Illinois Supreme Court Rules 43, 341, 352, 416, 434, 451, 603, 604, 606, 607, 608, 609, 611, 612, 613, 651, 701, 714, and 795 are amended, as follows.

Repealed and Reserved Rule 43

Rule 43. ~~Seminars on Capital Cases~~ Reserved.

~~**(a)** In order to insure the highest degree of judicial competency during a capital trial and sentencing hearing Capital Litigation Seminars approved by the Supreme Court shall be established for judges that may as part of their designated duties preside over capital litigation. The Capital Litigation Seminars should include, but not be limited to, the judge's role in capital cases, motion practice, current procedures in jury selection, substantive and procedural death penalty case law, confessions, and the admissibility of evidence in the areas of scientific trace materials, genetics, and DNA analysis. Seminars on capital cases shall be held twice a year.~~

~~**(b)** Any circuit court judge or associate judge who in his current assignment may be called upon to preside over a capital case shall attend a Capital Litigation Seminar at least once every two years.~~

~~Adopted March 1, 2001, paragraph (a) effective immediately, paragraph (b) effective one year after adoption of the rule.~~

~~Committee Comments~~
~~Special Supreme Court Committee on Capital Cases~~
~~March 1, 2001~~

~~The committee's proposal to require judicial training follows from the finding that reliability and fairness in a capital trial depend upon the skill and knowledge of the trial judge, the prosecutor, and counsel for the defense. The training requirement for judges complements rules establishing minimum qualifications for defense counsel and prosecutors in capital cases. See Rules 416(d), 701 and 714. Rule 43 establishes a regular series of Capital Litigation Seminars, and provides that judges who may preside over capital cases in the course of their regular assignment must attend a seminar at least once every two years. Aside from the direct benefits of the training seminars, Rule 43 will also insure that~~

~~continuously updated training and reference materials are available to judges who hear capital cases.~~

~~Rule 43 is intended to increase judicial training and access to information and should not be viewed as a limitation on the kind or amount of training judges receive. For example, in requiring attendance at seminars, Rule 43 is not intended to foreclose the use of video conferencing, Internet access, or other technological means to participate in training from remote locations. Trial judges are encouraged to participate in additional training whenever possible.~~

~~It is contemplated that any judge who presides over a capital case on or after the effective date of paragraph (b) of the rule will have prior thereto attended a Capital Litigation Seminar.~~

Amended Rule 341

Rule 341. Briefs

(a) Form of Briefs. Briefs shall be produced in clear, black print on white, opaque, unglazed paper, 8 ½ by 11 inches, and paginated. Only one side of the paper may be used. The text must be double-spaced, ; however, headings may be single-spaced. Margins must be at least 1 ½ inch on the left side and 1 inch on the other three sides. Briefs shall be safely and securely bound on the left side in a manner that does not obscure the text. Quotations of two or more lines in length may be single-spaced; however, lengthy quotations are not favored and should be included only where they will aid the court's comprehension of the argument. Footnotes are discouraged but, if used, may be single-spaced.

Documents may be produced by a word-processing system, typewritten, or commercially printed, and reproduced by any process that provides clear copies consistent with the requirements of this rule. Typeface must be 12-point or larger throughout the document, including quoted material and any footnotes. Condensed type is prohibited. Carbon copies are not permitted.

(b) Length of Briefs.

(1) Page Limitation. The brief of appellant and brief of appellee shall each be limited to 50 pages, and the reply brief to 20 pages. This page limitation excludes pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a). Cross-appellants and cross-appellees shall each be allowed an additional 30 pages, and the cross-appellant's reply brief shall not exceed 20 pages. ~~In the Supreme Court, briefs of appellant and appellee in capital cases shall each be limited to 75 pages and the reply brief to 27 pages.~~

(2) Motions. Motions to file a brief in excess of the page limitation of this rule are not favored. Such a motion shall be filed not less than 10 days before the brief is due or not less than 5 days before a reply brief is due and shall state the excess number of pages requested and the specific grounds establishing the necessity for excess pages. The motion shall be supported by affidavit or verification by certification under Section 1–109 of the Code of Civil Procedure

of the attorney or unrepresented party. Any affidavit shall be sworn to before a person who has authority under the law to administer oaths.

(c) Certificate of Compliance. The attorney or unrepresented party shall submit with the brief his or her signed certification that the brief complies with the form and length requirements of paragraphs (a) and (b) of this rule, as follows:

> I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is ___ pages.

(d) Covers. The cover of the brief shall contain: the number of the case in the reviewing court and the name of that court; the name of the court or administrative agency from which the case was brought; the name of the case as it appeared in the lower tribunal, except that the status of each party in the reviewing court shall also be indicated (*e.g.*, plaintiff-appellant); the name of the trial judge entering the judgment to be reviewed; and the individual names and addresses of the attorneys and their law firm (or of the party if the party has no attorney) filing the brief shall also be stated.

The colors of the covers of the documents shall be: abstract, gray; appellant's brief or petition, white; appellee's brief or answer, light blue; appellant's reply brief, light yellow; reply brief of appellee, light red; petition for rehearing, light green; answer to petition for rehearing, tan; and reply on rehearing, orange. If a separate appendix is filed, the cover shall be the same color as that of the brief which it accompanies.

(e) Number of Copies To Be Filed and Served; Proof of Service. Except as provided hereafter nine copies of each brief shall be filed in appeals to the Appellate Court. In proceedings in the Appellate Court to review orders of the Illinois Workers' Compensation Commission, 15 copies of each brief shall be filed. In appeals to the Supreme Court, 20 copies of each brief shall be filed. Three copies shall be served upon each other party to the appeal represented by separate counsel. If the Attorney General and the State's Attorney both appear for a party, each shall be served with three copies. Proof of service shall be filed with all briefs.

(f) References to Parties. In the brief the parties shall be referred to as in the trial court, *e.g.*, plaintiff and defendant, omitting the words appellant and appellee and petitioner and respondent, or by using actual names or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the railroad," etc.

In all appeals involving juveniles filed from proceedings under the Juvenile Court Act or the Adoption Act, and in all appeals under the Mental Health and Developmental Disabilities Code, the Mental Health and Developmental Disabilities Confidentiality Act, or from actions for collection of fees for mental health services, the respective juvenile or recipient of mental-health services shall be identified by first name and last initial or by initials only.

The preferred method is the first name and last initial. The alternative method of initials only is to be used when, due to an unusual first name or spelling, the preferred method would create a substantial risk of revealing the individual's

identity. The name of the involved juvenile or recipient of services shall not appear in the brief.

(g) Citations. Citations shall be made as provided in Rule 6.

(h) Appellant's Brief. The appellant's brief shall contain the following parts in the order named:

(1) A summary statement, entitled "Points and Authorities," of the points argued and the authorities cited in the Argument. This shall consist of the headings of the points and subpoints as in the Argument, with the citation under each heading of the authorities relied upon or distinguished, and a reference to the page of the brief on which each heading and each authority appear. Cases shall be cited as near as may be in the order of their importance.

(2) An introductory paragraph stating (i) the nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury, and (ii) whether any question is raised on the pleadings and, if so, the nature of the question.

Illustration:

"This action was brought to recover damages occasioned by the alleged negligence of the defendant in driving his automobile. The jury rendered a verdict for the plaintiff upon which the court entered the judgment from which this appeal is taken. No questions are raised on the pleadings."

(3) A statement of the issue or issues presented for review, without detail or citation of authorities.

Illustration:

Issue Presented for Review:

"Whether the plaintiff was guilty of contributory negligence as a matter of law."

[or]

"Whether the trial court ruled correctly on certain objections to evidence."

[or]

"Whether the jury was improperly instructed."

The appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument.

(4) A statement of jurisdiction:

(i) In a case appealed to the Supreme Court directly from the trial court or as a matter of right from the Appellate Court, a brief statement under the heading "Jurisdiction" of the jurisdictional grounds for the appeal to the Supreme Court.

(ii) In a case appealed to the Appellate Court, a brief, but precise

statement or explanation under the heading "Jurisdiction" of the basis for appeal including the supreme court rule or other law which confers jurisdiction upon the reviewing court; the facts of the case which bring it within this rule or other law; and the date that the order being appealed was entered and any other facts which are necessary to demonstrate that the appeal is timely. In appeals from a judgment as to all the claims and all the parties, the statement shall demonstrate the disposition of all claims and all parties. All facts recited in this statement shall be supported by page references to the record on appeal.

(5) In a case involving the construction or validity of a statute, constitutional provision, treaty, ordinance, or regulation, the pertinent parts of the provision verbatim, with a citation of the place where it may be found, all under an appropriate heading, such as "Statutes Involved." If the provision involved is lengthy, its citation alone will suffice at this point, and its pertinent text shall be set forth in an appendix.

(6) Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal, *e.g.*, R. C7, or R. 7, or to the pages of the abstract, *e.g.*, A. 7. Exhibits may be cited by reference to pages of the abstract or of the record on appeal or by exhibit number followed by the page number within the exhibit, *e.g.*, Pl. Ex. 1, p. 6.

(7) Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal or abstract, if any, where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.

(8) A short conclusion stating the precise relief sought, followed by the names of counsel as on the cover.

(9) An appendix as required by Rule 342.

(i) Briefs of Appellee and Other Parties. The brief for the appellee and other parties shall conform to the foregoing requirements, except that items (2), (3), (4), (5), (6) and (9) of paragraph (h) of this rule need not be included except to the extent that the presentation by the appellant is deemed unsatisfactory.

(j) Reply Brief. The reply brief, if any, shall be confined strictly to replying to arguments presented in the brief of the appellee and need contain only Argument.

(k) Supplemental Brief on Leave to Appeal. A party allowing a petition for leave to appeal or for appeal as a matter of right or an answer thereto to stand as his or her main brief, may file a supplemental brief, so entitled, containing additional material, and omitting any of the items set forth in paragraph (h) of this rule to the extent that they are adequately covered in the petition or answer. The Points and Authorities in the supplemental brief need relate only to the contents of that brief.

(l) Copy of Document in Electronic Format. In addition to the number of copies required to be filed and served in accordance with this rule, the brief may be

furnished on any removable media, such as floppy disk or CD-ROM, acceptable to the clerk of the reviewing court in Adobe Acrobat and served on each party to the appeal. The electronic document may but need not contain the required appendix. A copy of a brief in electronic format shall be filed upon request of the court or a judge thereof.

Amended October 21, 1969, effective January 1, 1970; amended July 30, 1979, effective October 15, 1979; amended January 5, 1981, effective February 1, 1981; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended April 27, 1984, and May 16, 1984, effective July 1, 1984; amended April 10, 1987, effective August 1, 1987; amended May 21, 1987, effective August 1, 1987; amended June 12, 1987, effective immediately; amended May 18, 1988, effective August 1, 1988; amended January 20, 1993, effective immediately; amended December 17, 1993, effective February 1, 1994; amended May 20, 1997, effective July 1, 1997; amended April 11, 2001, effective immediately; amended October 1, 2001, effective immediately; amended May 24, 2006, effective September 1, 2006; amended March 16, 2007, effective immediately; amended June 4, 2008, effective July 1, 2008; amended Feb. 6, 2013, eff. immediately.

Amended Rule 352

Rule 352. Conduct of Oral Arguments

(a) Request; Waiver; Dispensing With Oral Argument. A party shall request oral argument by stating at the bottom of the cover page of his or her brief that oral argument is requested, or, if the party has allowed a petition for leave to appeal or answer to stand as his or her brief, by mailing to the clerk and to opposing parties, within the time in which the party could have filed a further brief, a notice requesting oral argument. If any party so requests, all other parties may argue without an additional request. No party may argue unless that party has filed a brief as required by the rules and paid any fee required by law. A party who has requested oral argument and who thereafter determines to waive oral argument shall promptly notify the clerk and all other parties. Any other party who has filed a brief without requesting oral argument may then request oral argument upon prompt notice to the clerk and all other parties.

After the briefs have been filed, the court may dispose of any case without oral argument if no substantial question is presented, but this power should be exercised sparingly.

(b) Length. Unless the court otherwise orders, ~~in a capital case each side shall be allowed not to exceed 30 minutes for its main argument. In a noncapital case,~~ each side shall be allowed not to exceed 20 minutes for its main argument. In all cases, the appellant shall have not to exceed an additional 10 minutes strictly confined to rebuttal. If only one side argues, the argument shall not exceed 15 minutes. The court may grant additional time on motion filed in advance of the date fixed for hearing if it appears that additional time is necessary for the adequate

presentation of the case. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Reading Prohibited. Reading at length from the record, briefs, or authorities cited will not be permitted.

(d) Divided Arguments. No more than two counsel will be heard from each side except by leave of court, which will be granted when there are several parties on the same side with diverse interests. Divided arguments are not favored and care shall be taken to avoid duplication of arguments.

(e) Multiple Parties. If a case involves appeals by more than one party the sequence of oral argument shall be as the parties agree or as the court directs.

(f) Limitation on Briefs and Memoranda. No brief or memorandum shall be filed after the due date of the reply brief or after oral argument except by leave of court or a judge thereof.

(g) When Oral Argument Not Requested. If a case is submitted to the court without request for oral argument, it shall be decided on the briefs unless the court orders oral argument.

Amended effective July 1, 1975; amended May 28, 1982, effective July 1, 1982; amended June 19, 1989, effective August 1, 1989; amended August 18, 1989, effective September 1, 1989; amended December 17, 1993, effective February 1, 1994; amended Feb. 6, 2013, eff. immediately.

Repealed and Reserved Rule 416

Rule 416. ~~Procedures in Capital Cases~~ Reserved.

~~**(a)** Scope of Rule. The procedures adopted herein shall be applicable in all cases wherein capital punishment may be imposed, unless the State has given notice of its intention not to seek the death penalty.~~

~~**(b)** Statement of Purpose. This rule is promulgated for the following purpose:~~

~~(i) To assure that capital defendants receive fair and impartial trials and sentencing hearings within the courts of this state; and~~

~~(ii) To minimize the occurrence of error to the maximum extent feasible and to identify and correct with due promptness any error that may occur.~~

~~**(c)** Notice of Intention to Seek or Decline Death Penalty. The State's Attorney or Attorney General shall provide notice of the State's intention to seek or reject imposition of the death penalty by filing a Notice of Intent to Seek or Decline Death Penalty as soon as practicable. In no event shall the filing of said notice be later than 120 days after arraignment, unless for good cause shown, the court directs otherwise. The Notice of Intent to seek imposition of the death penalty shall also include all of the statutory aggravating factors enumerated in section 9-1(b) of the Criminal Code of 1961 (720 ILCS 5/9-1(b)) which the State intends to introduce during the death penalty sentencing hearing.~~

~~**(d)** Representation by Counsel. In all cases wherein the State has given notice of~~

its intention to seek the death penalty, or has failed to provide any notice pursuant to paragraph (c), the trial judge shall appoint an indigent defendant two qualified counsel who have been certified as members of the Capital Litigation Trial Bar pursuant to Rule 714, or appoint the public defender, who shall assign two qualified counsel who have been certified as members of the Capital Litigation Trial Bar. In the event the defendant is represented by private counsel, the trial judge shall likewise insure that counsel is a member of the Capital Litigation Trial Bar.

The trial judge shall likewise insure that counsel for the State, unless said counsel is the Attorney General or the duly elected or appointed State's Attorney of the county of venue, is a member of the Capital Litigation Trial Bar.

(e) Discovery Depositions in Capital Cases. In capital cases discovery depositions may be taken in accordance with the following provisions:

(i) A party may take the discovery deposition upon oral questions of any person disclosed as a witness pursuant to Supreme Court Rules 412 or 413 with leave of court upon a showing of good cause. In determining whether to allow a deposition, the court should consider the consequences to the party if the deposition is not allowed, the complexities of the issues involved, the complexity of the testimony of the witness, and the other opportunities available to the party to discover the information sought by deposition. However, under no circumstances, may the defendant be deposed.

(ii) The taking of depositions shall be in accordance with rules providing for the taking of depositions in civil cases, and the order for the taking of a deposition may provide that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

(iii) Attendance of Defendant. A defendant shall have no right to be physically present at a discovery deposition.

(iv) Signing and Filing Depositions. Rule 207 shall apply to the signing and filing of depositions taken pursuant to this rule.

(v) Costs. If the defendant is indigent, all costs of taking depositions shall be paid by the county wherein the criminal charge is initiated. If the defendant is not indigent the costs shall be allocated as in civil cases.

(f) Case Management Conference. No later than 120 days after the defendant has been arraigned or no later than 60 days after the State has disclosed its intention to seek the death penalty, whichever date occurs earlier, the court shall hold a case management conference. Counsel who will conduct the trial personally shall attend such conference. At the conference, the court shall do the following:

(i) Confirm the certification of counsel under Supreme Court Rule 714 as a member in good standing of the Capital Litigation Trial Bar.

(ii) Confirm that all disclosures by the State required under Supreme Court Rule 412 have been completed and that the certificate required by paragraph (g) below has been filed or establish a date by which the same shall be accomplished.

(iii) Confirm that all disclosures required by defense counsel under Supreme Court Rule 413 have been completed and that the certificate required by paragraph (h) below has been filed or establish a date by which the same shall

be accomplished.

(iv) Confirm that the State has disclosed all statutory aggravating factors enumerated in section 9-1(b) of the Criminal Code of 1961 (720 ILCS 5/9-1(b)) which the State intends to introduce during the death penalty sentencing hearing or establish a date by which the same shall be accomplished.

(v) Confirm that all disclosures required by Supreme Court Rule 417 have been completed or establish a date by which the same shall be accomplished.

(vi) Enter any other orders and undertake any other steps necessary to implement this rule.

(vii) Schedule any further case management conferences which the trial court deems advisable.

(g) In all capital cases the State shall file with the court not less than 14 days before the date set for trial, or at such other time as the court may direct, a certificate stating that the State's Attorney or Attorney General has conferred with the individuals involved in the investigation and trial preparation of the case and represents that all material or information required to be disclosed pursuant to Rule 412 has been tendered to defense counsel. This certificate shall be filed in open court in the defendant's presence.

(h) In all capital cases the defense shall file with the court not less than 14 days before the date set for trial, or at such other time as the court may direct, a readiness certificate signed by both lead and co-counsel stating that they have met with the defendant and fully discussed the discovery, the State's case and possible defenses, and have reviewed the evidence and defenses which may mitigate the consequences for the defendant at trial and at sentencing. This certificate shall be filed in open court in the defendant's presence.

Adopted March 1, 2001. The provisions of paragraphs (d) and (f)(i) which require membership in the Capital Litigation Trial Bar shall be effective one year after adoption of this rule and shall apply in cases filed by information or indictment on or after said effective date. The remaining provisions of the rule shall be effective immediately, except when in the opinion of the trial, Appellate, or Supreme Court the application of the new rules in a particular case pending at the time the rule becomes effective would not be feasible or would work an injustice, in which case former procedures would apply.

Committee Comments
Special Supreme Court Committee on Capital Cases
March 1, 2001
(Revised September 23, 2008)

Rule 416 is part of a series of measures designed to improve pretrial and trial procedures in capital cases. The purpose of Rule 416, as stated in paragraph (b), is to ensure that capital defendants receive fair and impartial trials and to minimize the occurrence of error in capital trials. See also Rule 43 (judicial seminars on capital cases), Rule 411 (applicability of discovery rules to capital sentencing hearings),

Rule 412(c) (State identification of material that may be exculpatory or mitigating), Rule 417 (DNA evidence), and Rules 701(b) and 714 (Capital Litigation Trial Bar).

Paragraph (a) limits the application of Rule 416 to cases in which the death penalty may be imposed, *i.e.*, a case involving a first degree murder charge, where the defendant may be eligible for the death penalty and the State has not provided notice it will decline to seek the death penalty. The capital case procedures of Rule 416 are generally not intended to take effect until the State has had the opportunity to provide notice of its intent to seek or decline to seek the death penalty as provided in paragraph (c). All capital case procedures under Rule 416 take effect upon the earlier of: (1) notice that the State intends to seek the death penalty; or (2) expiration of the time for notice under paragraph (c) without notice of the State's intent to seek or not seek the death penalty. A case is presumed to be capital in the event the State does not provide notice in the time allowed by paragraph (c) in order to prevent unreasonable delay in the application of capital case procedures.

Paragraph (c) requires the State to provide pretrial notice of its intent to seek or decline to seek the death penalty as soon as practicable. Unless the court directs otherwise for good cause shown, notice must be given within 120 days after the defendant's arraignment. If the State intends to seek the death penalty, the aggravating factors the State intends to introduce in the death penalty sentencing hearing must also be disclosed. The notice requirement is intended to improve trial administration by providing the defendant and the court with advance notice that a case is actually, rather than potentially, a capital case. The notice requirement is also intended to promote fairness in capital trials by ensuring the defendant is clearly advised of the State's intent to seek the death penalty and the basis upon which the death penalty will be sought, thereby allowing better preparation for trial. Early notice that the State will not seek the death penalty will also help to limit the use of capital case resources and procedures to actual capital cases.

The committee chose 120 days after arraignment as the benchmark for State notice so that State's Attorneys would have adequate time to decide whether to seek or not seek the death penalty. The committee found that by exercising careful and informed discretion in deciding whether to seek the death penalty, the State's Attorney provides an indispensable check against the possibility of injustice in capital cases. The committee sought to encourage the elected or appointed State's Attorney to personally review potential death penalty cases before making the decision to seek or not seek the death penalty. The committee found that for most capital cases statewide, and nearly all capital cases in Cook County, notice no more than 120 days after arraignment will be far enough in advance of the trial date to provide the defendant with meaningful notice of the nature of the case and to trigger capital case procedures early enough allow the defendant to receive the intended benefit of those procedures.

In some circumstances the State will be required to give notice of its intent to seek or decline to seek the death penalty before 120 days have elapsed. For example, if the State is ready to proceed to trial at an early date, notice of the State's intent should be given immediately. In such cases, the decision to seek or not seek the death penalty has been made, and paragraph (c) requires notice *as soon as*

practicable. If the defendant intends to exercise the right to a speedy trial and insist on an early trial date, the defendant may move to accelerate the time for notice. The rule is also intended to permit the trial court to accelerate the time for notice *sua sponte*.

Paragraph (d) provides that two attorneys who are members of the Capital Litigation Trial Bar established by Rule 714 must be appointed to represent an indigent defendant in a capital case. In appointing counsel, the trial court may wish to consider whether the appointment will conflict with counsel's existing caseload. Paragraph (d) also provides that the trial court must confirm that all attorneys appearing in a capital case (other than the Attorney General or the duly elected or appointed State's Attorney for the county of venue) are members of the Capital Litigation Trial Bar, whether they are public defenders, appointed counsel, retained defense counsel, or members of the prosecution. But see Rule 701(b) (nonmembers may participate in the capacity of third chair under the direct supervision of qualified lead or co-counsel).

The duty to verify the qualifications of counsel and appoint a second attorney to represent an indigent defendant does not take effect until the State gives notice of intent to seek the death penalty or until the time for notice under paragraph (c) expires without any notice from the State. However, while the State's decision to seek or decline to seek the death penalty is pending, the trial court should act to minimize potential harm to the defendant. If the defendant is indigent a member of the Capital Litigation Trial Bar, certified as lead counsel, should be appointed. Appointment of private counsel will be necessary in such cases when the public defender's office does not have qualified counsel available, when the public defender's office can only provide one qualified attorney for the case and has declined to provide representation in association with private appointed counsel (see discussion of mixed representation, below), or when the public defender is otherwise unavailable to provide representation.

In a small number of cases, the defendant may initially retain an attorney who is not member of the Capital Litigation Trial Bar or is not certified as lead counsel. See Rule 701(b) (private attorneys who are not members of the Capital Litigation Trial Bar should not agree to provide representation in a potentially capital case). When the defendant in a potentially capital case appears with retained counsel, the trial court should immediately determine whether the attorney is a member of the Capital Litigation Trial Bar and whether the attorney is certified as lead counsel or will serve as co-counsel with properly certified lead counsel. If it appears counsel is not a member of the Capital Litigation Trial Bar or does not have the proper certification, the court should explain the Capital Litigation Trial Bar membership requirements to the defendant and (unless the State indicates notice that the death penalty will not be sought will be filed *instanter*) advise the defendant to retain a properly certified member of Capital Litigation Trial Bar. Similarly, if a nonindigent defendant in a potentially capital case appears initially without counsel, the court should advise the defendant to retain a properly certified member of the Capital Litigation Trial Bar.

Paragraph (d) also provides that if appointed in a capital case, the public defender shall assign two qualified attorneys to represent the defendant. As noted above, the

appointment of private counsel may be necessary when the public defender's office is unable to provide two qualified attorneys. However, Rule 416(d) is not intended to prohibit the trial court from appointing a private attorney to serve with an attorney from the public defender's office if the public defender's office is able to provide one qualified attorney and both the public defender and private counsel consent.

The committee believes that in many cases the public defender will be willing and able to work with private appointed counsel. The advantages of mixed representation include the ability of the public defender's office to assist private appointed counsel in gaining access to capital case resources and to provide insight regarding local practices. Mixed representation could also provide the opportunity for qualified co-counsel in the public defender's office to obtain experience in capital cases. On the other hand, the risk of inconsistency and disharmony on the defense team, and potential liability issues for the public defender, suggest that the trial court should never make an appointment involving mixed representation without the express consent of the public defender and the private attorney. However, trial courts shall not appoint attorneys of the Office of the State Appellate Defender to serve as trial counsel in capital cases nor shall attorneys of that agency serve in that capacity unless and until such time as they may be statutorily authorized to appear as trial counsel.

Concerns about potential conflicts between defense counsel also warrant caution when the court appoints two private attorneys for an indigent capital defendant. Lead counsel should be appointed first, and allowed to recommend co-counsel. Lead counsel's recommendation for co-counsel should be accepted, unless the attorney recommended is not a member of the Capital Litigation Trial Bar.

Paragraph (e) permits the parties to seek leave of court to depose persons who have been identified as potential witnesses pursuant to Rule 412 or Rule 413. The committee found that discovery depositions may enhance the truth-seeking process of capital trials by providing counsel with an additional method to discover relevant information and prepare to confront key witness testimony. The availability of discovery depositions may also aid the trial judge in ruling upon motions *in limine* and evidentiary objections at trial.

Although depositions are a necessary means of improving discovery in capital cases, the trial court must be aware of the impact a deposition may have on a witness, and address any witness problems and concerns as they arise. For example, depositions should be scheduled to avoid conflicts with the work and family obligations of a witness. If there is any concern regarding witness safety, the court may require that the deposition be held in a place or manner that will ensure the security of the witness. The court may also issue protective orders to restrict the use and disclosure of information provided by a witness. Counsel should be prepared to advise the trial court of any special concerns regarding a witness, so the court may fashion an appropriate deposition order.

The decision to permit a deposition is committed to the sound discretion of the trial court. The rule does not limit the use of depositions to specific categories of witnesses, because the need to depose a potential witness will depend on the facts of each case. The committee found, however, that depositions are more likely to be

~~necessary for certain types of witnesses. For example, complex trial issues are often raised by the testimony of jailhouse informants, witnesses who have criminal charges pending, witnesses who have not completed their sentence in a criminal case, and witnesses who testify for the State by agreement. Trial courts may also find depositions of eyewitnesses, and particularly sole eyewitnesses, are warranted to ensure full disclosure and adequate testing of crucial eyewitness testimony. In addition, the complex nature of expert testimony suggests that depositions of expert witnesses may often be justified.~~

~~The categories of witnesses mentioned above are illustrative only. Depositions of witnesses falling within these categories are not intended to be automatic. For example, the deposition of a pathologist who will testify regarding cause of death may not be necessary in a case involving the defense of insanity. Conversely, the categories of witnesses suggested above are not exclusive. The trial court's decision to grant or deny a request to depose must be made on a case-by-case basis, considering the facts and issues of the case and the factors listed in the Rule.~~

~~Paragraph (e)(iii) provides that a defendant has no right to be physically present at a discovery deposition. The rule is based on the determination that concerns about the risk of witness intimidation, as well as the cost and security issues related to a defendant's attendance at a deposition, far outweigh any potential benefits attendance may have for the defendant. The rule does not foreclose the possibility that the trial court may find sufficient cause to permit the attendance of the defendant at a discovery deposition and is not intended to restrict the discretion of the trial court in that regard.~~

~~Paragraph (f) requires the court to hold a case management conference no later than 120 days after the defendant has been arraigned or 60 days after the State provides notice of its intent to seek the death penalty, whichever is earlier. At the case management conference, the court will confirm that counsel are members in good standing of the Capital Litigation Trial Bar, and appoint qualified counsel, as necessary. The case management conference also provides the court with an opportunity to verify that the State has provided notice of those aggravating factors the State intends to introduce in the capital sentencing hearing. The court may also take any other steps necessary to ensure compliance with Rule 416. Scheduling of additional case management conferences is within the discretion of the trial court.~~

~~The case management conference provides an important tool for management of the discovery process. Subparagraphs (ii) and (iii) of paragraph (f) authorize the court to monitor compliance with discovery requirements and set deadlines for discovery under Rules 412 and 413, respectively. The provisions of subparagraph (vi) of paragraph (f) permit the court to establish deadlines for requesting and taking depositions. Specific deadlines for depositions should be established when needed to prevent undue delay in bringing a case to trial and to avoid speedy-trial issues.~~

~~Paragraph (f) does not limit the trial court's discretion with respect to procedures for case management conferences, and permits the trial court to expand the scope of the conferences as the circumstances require. For example, the trial court may wish to hold a conference pertaining to discovery deadlines in an informal setting, and confirm the results of the conference with a written discovery order. While the rule~~

is intended to be flexible, the committee notes that in the context of a criminal proceeding the use of informal case management conference procedures must be approached with caution, and the need for a record should always be considered.

Paragraph (g) requires the State to certify that disclosures required by Rule 412 have been completed (subject to the continuing duty to disclose additional materials under Rule 415(b)). Paragraph (g) also requires certification that the State has contacted persons involved in the investigation and trial preparation of the case to determine the existence of material required to be disclosed under Rule 412. The duty to contact persons involved in the investigation under paragraph (g) supplements the duty to ensure a flow of information between prosecutors, investigators, and other law enforcement personnel established by Rule 412(f) and is intended to minimize the risk of nondisclosure of exculpatory or mitigating evidence. Prosecutors should also verify that they have obtained and properly disclosed all relevant information from experts and laboratory personnel.

Making specific inquiries to determine the existence of material that must be disclosed is especially important with respect to information that must be disclosed under *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963). In *Strickler v. Greene*, 527 U.S. 263, 280-81, 144 L. Ed. 2d 286, 301-02, 119 S. Ct. 1936, 1948 (1999), the United States Supreme Court provided the following summary of its decisions regarding the duty to disclose:

> "In *Brady*, this Court held 'that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.' [Citation.] We have since held that the duty to disclose such evidence is applicable even though there has been no request by the accused [citation] and that the duty encompasses impeachment evidence as well as exculpatory evidence [citation]. Such evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.' [Citations.] Moreover, the rule encompasses evidence 'known only to police investigators and not to the prosecutor.' [Citation.] In order to comply with *Brady*, therefore, 'the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police.' [Citation.]
>
> These cases, together with earlier cases condemning the knowing use of perjured testimony, illustrate the special role played by the American prosecutor in the search for truth in criminal trials. Within the federal system, for example, we have said that the United States Attorney is 'the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.' "

Under *Strickler*, there can be no question that the responsibility to disclose exculpatory or mitigating material extends beyond disclosure of information in the prosecutor's file. Regardless of the good faith of the prosecutor, failure to disclose

~~exculpatory or mitigating information in the possession of police or other law enforcement personnel, laboratory personnel, and State experts may undermine confidence in the outcome of a trial. The committee recognizes that conferring with the ofttimes numerous persons involved in investigating and preparing a capital case for trial may be burdensome; however, the committee found that making the effort to do so is, in fact, the only prudent course in light of the scope of the duty to disclose and the magnitude of the proceedings.~~

~~The reference to the "State's Attorney or Attorney General" in paragraph (g) of Rule 416 is intended to emphasize the importance of making proper pretrial disclosures to the defense, but includes all counsel acting on behalf of the State's Attorney or the Attorney General. Consequently, paragraph (g) does not require the personal appearance or action of the State's Attorney or the Attorney General, and certification may be provided by the attorney(s) prosecuting the case. Similarly, paragraph (c) is not intended to require that notice of intent to seek or not seek the death penalty must be provided personally by the State's Attorney or the Attorney General, though the actual responsibility to decide whether to seek the death penalty will rarely, if ever, be delegated. On the other hand, "Attorney General or the duly elected or appointed State's Attorney of the county of venue," as used in the last sentence of paragraph (d), refers exclusively to the individuals who occupy the office of Attorney General and the office of State's Attorney of the county of venue.~~

~~Paragraph (h) requires certification of defense readiness for trial. Like the State's certification under paragraph (g), the defense certification of readiness for trial is to be filed in open court, in the presence of the defendant. At the time of filing the certificates required by paragraphs (g) and (h), the defendant should be allowed the opportunity to voice any objections regarding pretrial matters such as the lack of opportunity to speak to counsel, or other complaints, so these issues can be dealt with in advance of trial.~~

Amended Rule 434

Rule 434. Jury Selection

(a) Impaneling Juries. In criminal cases the parties shall pass upon and accept the jury in panels of four, commencing with the State, unless the court, in its discretion, directs otherwise, and alternate jurors shall be passed upon separately.

(b) Names and Addresses of Prospective Jurors. Upon request, the parties shall be furnished with a list of prospective jurors with their addresses, if known.

(c) Challenging Prospective Jurors for Cause. Each party may challenge jurors for cause. If a prospective juror has a physical impairment, the court shall consider such prospective juror's ability to perceive and appreciate the evidence when considering a challenge for cause.

(d) Peremptory Challenges. A defendant tried alone shall be allowed ~~14 peremptory challenges in a capital case, 7~~ seven peremptory challenges in a case in which the punishment may be imprisonment in the penitentiary, and ~~5~~ five in all other cases; except that, in a single trial of more than one defendant, each defendant

shall be allowed ~~8 peremptory challenges in a capital case, 5~~ five peremptory challenges in a case in which the punishment may be imprisonment in the penitentiary, and ~~3~~ three in all other cases. If several charges against a defendant or defendants are consolidated for trial, each defendant shall be allowed peremptory challenges upon one charge only, which single charge shall be the charge against that defendant authorizing the greatest maximum penalty. The State shall be allowed the same number of peremptory challenges as all of the defendants.

(e) Selection of Alternate Jurors. After the jury is impaneled and sworn the court may direct the selection of alternate jurors, who shall take the same oath as the regular jurors. Each party shall have one additional peremptory challenge for each alternate juror. If before the final submission of a cause a member of the jury dies or is discharged he shall be replaced by an alternate juror in the order of election.

Adopted February 19, 1982, effective April 1, 1982; amended March 27, 1985, effective May 1, 1985; amended Feb. 6, 2013, eff. immediately.

Amended Rule 451

Rule 451. Instructions

(a) Use of IPI Criminal Instructions; Requirements of Other Instructions. Whenever Illinois Pattern Jury Instructions, Criminal (4th ed. 2000) (IPI Criminal 4th), contains an instruction applicable in a criminal case, giving due consideration to the facts and the governing law, and the court determines that the jury should be instructed on the subject, the IPI Criminal 4th instruction shall be used, unless the court determines that it does not accurately state the law. Whenever IPI Criminal 4th does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given on that subject should be simple, brief, impartial, and free from argument.

(b) Court's Instructions. At any time before or during the trial, the court may direct counsel to prepare designated instructions. Counsel shall comply with the direction, and copies of instructions so prepared shall be marked "Court's Instructions." Counsel may object at the conference on instructions to any instruction prepared at the court's direction, regardless of who prepared it, and the court shall rule on these objections as well as objections to other instructions. The grounds of the objections shall be particularly specified.

(c) Section 2-1107 of the Code of Civil Procedure to Govern. Except as otherwise provided in these rules, instructions in criminal cases shall be tendered, settled, and given in accordance with section 2-1107 of the Code of Civil Procedure, but substantial defects are not waived by failure to make timely objections thereto if the interests of justice require. The court shall instruct the jury after the arguments are completed, or, in its discretion, at the close of all the evidence.

(d) Procedure. The court shall be provided an original and a copy of each instruction, and a copy shall be delivered to each opposing counsel. In addition to numbering the copies and indicating who tendered them, as required by section 2-

1107 of the Code of Civil Procedure, the copy shall contain a notation substantially as follows:

"IPI Criminal 4th No. _____" or "IPI Criminal No. _____ Modified" or "Not in IPI Criminal"

as the case may be. All objections made at the conference and the rulings thereon shall be shown in the report of proceedings.

(e) Instructions Before Opening Statements. After the jury is selected and before opening statements, the court may orally instruct the jury as follows:

(i) On cautionary or preliminary matters, including, but not limited to, the burden of proof, the believability of witnesses, and the receipt of evidence for a limited purpose.

(ii) On the issue of substantive law applicable to the case, including, but not limited to, the elements of the offense. When requested by the defendant, the court may instruct the jury on the elements of an affirmative defense. Nothing in this rule is intended to eliminate the giving of written instructions at the close of the trial in accord with paragraph (c).

(f) Instructions During Trial. Nothing in the rule is intended to restrict the court's authority to give any appropriate instruction during the course of the trial.

(g) Proceedings When an Enhanced Sentence is Sought. When ~~the death penalty is not being sought and~~ the State intends, for the purpose of sentencing, to rely on one or more sentencing enhancement factors which are subject to the notice and proof requirements of section lll-3(c-5) of the Code of Criminal Procedure, the court may, within its discretion, conduct a unitary trial through verdict on the issue of guilt and on the issue of whether a sentencing enhancement factor exists. The court may also, within its discretion, upon motion of a party, conduct a bifurcated trial. In deciding whether to conduct such a bifurcated trial, the court must first hold a pretrial hearing to determine if proof of the sentencing enhancement factor is not relevant to the question of guilt or if undue prejudice outweighs the factor's probative value. Such bifurcated trial shall be conducted subject to the following:

(1) The court shall first conduct a trial through verdict on the issue of guilt under the procedures applicable to trials in other cases.

(2) If a guilty verdict is rendered, the court shall then conduct a separate proceeding before the same jury, or before the court if a jury was waived at trial or is waived for purposes of the separate proceeding. This separate proceeding shall be confined to the issue of whether the sentencing enhancement factor exists. The order in which the parties may present evidence and argument and the rules governing admission of evidence shall be the same as at trial, with the burden remaining on the State to prove the factor beyond a reasonable doubt. After the evidence is closed, the submission and giving of instructions shall proceed in accordance with paragraphs (a), (b), (c) and (d) of this rule.

(3) The court may enter a directed verdict or judgment notwithstanding the verdict respecting any fact at issue in the separate proceeding.

Amended June 19, 1968, effective January 1, 1969; amended February 19, 1982, effective April 1, 1982; amended May 28, 1982, effective July 1, 1982; amended May

20, 1997, effective July 1, 1997; amended February 10, 2006, effective July 1, 2006; amended Feb. 6, 2013, eff. immediately.

Amended Rule 603

Rule 603. Court To Which Appeal is Taken

Appeals in criminal cases in which a statute of the United States or of this State has been held invalid~~, and appeals by the defendants from judgments of the circuit courts imposing a sentence of death, and appeals by the State from orders decertifying a prosecution as a capital case on the grounds enumerated in section 9 1 (h-5) of the Criminal Code of 1961, or a finding that the defendant is mentally retarded after a hearing conducted pursuant to section 114 15(f) of the Code of Criminal Procedure of 1963~~ shall lie directly to the Supreme Court as a matter of right. All other appeals in criminal cases shall be taken to the Appellate Court.

Amended effective July 1, 1971; amended October 1, 2010, effective immediately; amended Feb. 6, 2013, eff. immediately.

Amended Rule 604

Rule 604. Appeals from Certain Judgments and Orders

(a) Appeals by the State.

(1) *When State May Appeal.* In criminal cases the State may appeal only from an order or judgment the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114- 1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; quashing an arrest or search warrant; or suppressing evidence~~; decertifying a prosecution as a capital case on the grounds enumerates in section 9 1(h-5) of the Criminal Code of 1961; or finding that the defendant is mentally retarded after a hearing conducted pursuant to section 114-15(b) of the Code of Criminal Procedure of 1963~~.

(2) *Leave to Appeal by State.* The State may petition for leave to appeal under Rule 315(a).

(3) *Release of Defendant Pending Appeal.* A defendant shall not be held in jail or to bail during the pendency of an appeal by the State, or of a petition or appeal by the State under Rule 315(a), unless there are compelling reasons for his or her continued detention or being held to bail.

(4) *Time Appeal Pending Not Counted.* The time during which an appeal by the State is pending is not counted for the purpose of determining whether an accused is entitled to discharge under section 103–5 of the Code of Criminal Procedure of 1963.

(b) Appeals When Defendant Placed Under Supervision or Sentenced to Probation, Conditional Discharge or Periodic Imprisonment. A defendant who

has been placed under supervision or found guilty and sentenced to probation or conditional discharge (see 730 ILCS 5/5-6-1 through 5-6-4), or to periodic imprisonment (see 730 ILCS 5/5-7-1 through 5-7-8), may appeal from the judgment and may seek review of the conditions of supervision, or of the finding of guilt or the conditions of the sentence, or both. He or she may also appeal from an order modifying the conditions of or revoking such an order or sentence.

(c) Appeals From Bail Orders by Defendant Before Conviction.

(1) *Appealability of Order With Respect to Bail.* Before conviction a defendant may appeal to the Appellate Court from an order setting, modifying, revoking, denying, or refusing to modify bail or the conditions thereof. As a prerequisite to appeal the defendant shall first present to the trial court a written motion for the relief to be sought on appeal. The motion shall be verified by the defendant and shall state the following:

(i) the defendant's financial condition;

(ii) his or her residence addresses and employment history for the past 10 years;

(iii) his or her occupation and the name and address of his or her employer, if he or she is employed, or his or her school, if he or she is in school;

(iv) his or her family situation; and

(v) any prior criminal record and any other relevant facts.

If the order is entered upon motion of the prosecution, the defendant's verified answer to the motion shall contain the foregoing information.

(2) *Procedure.* The appeal may be taken at any time before conviction by filing a verified motion for review in the Appellate Court. The motion for review shall be accompanied by a verified copy of the motion or answer filed in the trial court and shall state the following:

(i) the court that entered the order;

(ii) the date of the order;

(iii) the crime or crimes charged;

(iv) the amount and condition of bail;

(v) the arguments supporting the motion; and

(vi) the relief sought.

No brief shall be filed. A copy of the motion shall be served upon the opposing party. The State may promptly file an answer.

(3) *Disposition.* Upon receipt of the motion, the clerk shall immediately notify the opposing party by telephone of the filing of the motion, entering the date and time of the notification on the docket, and promptly thereafter present the motion to the court.

(4) *Report of Proceedings.* The court, on its own motion or on the motion of any party, may order court reporting personnel as defined in Rule 46 to file in the Appellate Court a report of all proceedings had in the trial court on the question of bail.

(5) *No Oral Argument.* No oral argument shall be permitted except when ordered on the court's own motion.

(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty. No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending. The motion shall be in writing and shall state the grounds therefor. When the motion is based on facts that do not appear of record it shall be supported by affidavit. The motion shall be presented promptly to the trial judge by whom the defendant was sentenced, and if that judge is then not sitting in the court in which the judgment was entered, then to the chief judge of the circuit, or to such other judge as the chief judge shall designate. The trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel. If the defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule 402(e) be furnished the defendant without cost. The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by mail or in person to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty, has examined the trial court file and report of proceedings of the plea of guilty, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings. The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew. If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion. Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.

(e) Appeal From an Order Finding Defendant Unfit to Stand Trial or Be Sentenced. The defendant or the State may appeal to the Appellate Court from an order holding the defendant unfit to stand trial or be sentenced.

(f) Appeal by Defendant on Grounds of Former Jeopardy. The defendant may appeal to the Appellate Court the denial of a motion to dismiss a criminal proceeding on grounds of former jeopardy.

(g) Appeal From an Order Granting a Motion to Disqualify Defense Counsel. The defendant may petition for leave to appeal to the Appellate Court from an order of the circuit court granting a motion to disqualify the attorney for the defendant based on a conflict of interest. The procedure for bringing interlocutory appeals pursuant to this subpart shall be the same as set forth in Supreme Court Rule 306(c).

Amended effective July 1, 1969; amended October 21, 1969, effective January 1, 1970; amended effective October 1, 1970, July 1, 1971, November 30, 1972, September 1, 1974, and July 1, 1975; amended February 19, 1982, effective April 1, 1982; amended June 15, 1982, effective July 1, 1982; amended August 9, 1983, effective October 1, 1983; amended April 1, 1992, effective August 1, 1992; amended October 5, 2000, effective November 1, 2000; amended February 1, 2005, effective immediately; amended December 13, 2005, effective immediately; amended February 10, 2006, effective July 1, 2006; amended Nov. 28, 2012, eff. Jan. 1, 2013; amended Feb. 6, 2013, eff. immediately.

Amended Rule 606

Rule 606. Perfection of Appeal

(a) How Perfected. ~~In cases in which a death sentence is imposed, an appeal is automatically perfected without any action by the defendant or his counsel. In other cases~~ Aappeals shall be perfected by filing a notice of appeal with the clerk of the trial court. The notice may be signed by the appellant or his attorney. If the defendant so requests in open court at the time he is advised of his right to appeal or subsequently in writing, the clerk of the trial court shall prepare, sign, and file forthwith a notice of appeal for the defendant. No step in the perfection of the appeal other than the filing of the notice of appeal is jurisdictional.

(b) Time. Except as provided in Rule 604(d), the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion. When a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court. Upon striking the notice of appeal, the trial court shall forward to the appellate court within 5 days a copy of the order striking the notice of appeal, showing by whom it was filed and the date on which it was filed. This rule applies whether the timely postjudgment motion was filed before or after the date on which the notice of appeal was filed. A new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely postjudgment motions. Within 5 days of its being so filed a copy of the notice of appeal or an amendment of the notice of appeal shall be transmitted by the clerk of the circuit court to the clerk of the court to which the appeal is taken. Except as provided in paragraph (c) below, and in Rule 604(d), no appeal may be taken from a trial court to a reviewing court after the expiration of 30 days from the entry of the order or judgment from which the appeal is taken. The clerk of the appellate court shall notify any party whose appeal has been dismissed under this rule.

(c) Extension of Time in Certain Circumstances. On motion supported by a showing of reasonable excuse for failing to file a notice of appeal on time filed in the reviewing court within 30 days of the expiration of the time for filing the notice of

appeal, or on motion supported by a showing by affidavit that there is merit to the appeal and that the failure to file a notice of appeal on time was not due to appellant's culpable negligence, filed in the reviewing court within six months of the expiration of the time for filing the notice of appeal, in either case accompanied by the proposed notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing.

(d) Form of Notice of Appeal. The notice of appeal shall be substantially in the following form:

In the Circuit Court of the _____ Judicial Circuit,
_____ County, Illinois
(Or, In the Circuit Court of Cook County, Illinois)

THE PEOPLE OF THE STATE OF ILLINOIS,

v. No. _____

_____

Notice of Appeal
Joining Prior Appeal / Separate Appeal / Cross Appeal
(circle one)

An appeal is taken from the order or judgment described below.

(1) Court to which appeal is taken: _____

_____

(2) Name of appellant and address to which notices shall be sent.

Name: _____

Address: _____Email:_____

(3) Name and address of appellant's attorney on appeal.

Name: _____

Address: _____Email:_____

If appellant is indigent and has no attorney, does he want one appointed?

(4) Date of judgment or order: _____

(5) Offense of which convicted _____

_____

(6) Sentence: _____

(7) If appeal is not from a conviction, nature of order appealed from:

_____

(8) If the appeal is from a judgment of a circuit court holding unconstitutional

a statute of the United States or of this state, a copy of the court's findings made in compliance with Rule 18 shall be appended to the notice of appeal.

(Signed) _____
(May be signed by appellant, attorney for appellant, or clerk of circuit court.)

The notice of appeal may be amended as provided in Rule 303(b)(5).

(e) Copies of Notice of Appeal to be Sent by Clerk.

(1) *When Defendant Is Appellant and Action Is Prosecuted by the State.* When the defendant is the appellant and the action was prosecuted by the State, the clerk shall send a copy of the notice of appeal to the State's Attorney of the county in which the judgment was entered and a copy to the Attorney General at his Springfield, Illinois, office.

(2) *When Defendant Is Appellant and the Action Is Prosecuted by a Governmental Entity Other Than the State.* If the defendant is the appellant and the action was prosecuted by a governmental entity other than the State for the violation of an ordinance, the copy of the notice of appeal shall be sent to the chief legal officer of the entity (*e.g.*, corporation counsel, city attorney), or if his name and address do not appear of record, then to the chief administrative officer of the entity at his official address.

(3) *When the Prosecuting Entity Is the Appellant.* When the State or other prosecuting entity is the appellant a copy of the notice of appeal shall be sent to the defendant and a copy to his counsel.

(f) Docketing. Upon receipt of the copy of the notice of appeal transmitted to the reviewing court pursuant to paragraph (a) of this rule, or the entry of an order granting a motion for leave to appeal under paragraph (c) of this rule, the clerk of the reviewing court shall enter the appeal upon the docket.

(g) Docketing Statement; Filing Fee. Within 14 days after the filing of the notice of appeal and pursuant to notice to the appellee's attorney, the party filing the notice of appeal shall file with the clerk of the reviewing court a docketing statement, together with proof of service thereof, and the required filing fee of $25. The form and contents of the docketing statement shall be as follows:

Docket Number in the Reviewing Court

Case Title (Complete)	)	Appeal From _____ County
	)	Circuit No. _____
	)	Trial Judge_____
	)	Date of Judgment _____

) Date of Posttrial Motion _____
) Date of Notice of Appeal_____
) Felony ( ) Misdemeanor ( )
) In Custody ( ) Out on Bond ( )

DOCKETING STATEMENT
(Criminal)

1. Full name and complete address of appellant(s) filing this statement:
Name: _____
Address:_____
Telephone: _____Email address:_____

Counsel On Appeal for Appellant(s) filing this docketing statement:
Name: _____ ARDC #_____
Address: _____
Telephone: _____Email address:_____

2. Full name and complete address of appellee(s):
Name: _____
Address:_____
Telephone: _____ Email address:_____

Counsel On Appeal for Appellee(s):
Name: _____
Address: _____
Telephone: _____
ARDC # if known: _____ Email address:_____

Court Reporting Personnel
(If more space is needed, use other side.)
Name: _____
Address: _____
Telephone: _____ Email address:_____

General statement of issues proposed to be raised: (Failure to include an issue in this statement will not result in the waiver of the issue on appeal.)

_____
_____
_____

As ___ attorney for the appellant ____ *Pro Se* appellant, I hereby certify that on the ___ day of _____, 20__, I asked / made a written request to the clerk of the circuit court to prepare the record on appeal, and on the ___ day of _____, 20__, I made a written request to the court reporting personnel to prepare the transcript(s).

_____	_____	_____
Date	Appellant's Attorney	*Pro Se* Appellant

In lieu of court reporting personnel's signature, I have attached the written request to the court reporting personnel to prepare the transcript (s).

_____	_____	_____
Date	Appellant's Attorney	*Pro Se* Appellant

I hereby acknowledge receipt of an order for the preparation of a report of proceedings.

_____	_____
Date	Court Reporting Personnel or Supervisor

Amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971, July 1, 1975, and February 17, 1977; amended July 15, 1979, effective October 15, 1979; amended April 27, 1984, effective July 1, 1984; amended August 27, 1999, effective immediately; amended October 22, 1999, effective December 1, 1999; amended December 13, 2005, effective immediately; amended July 27, 2006, effective September 1, 2006; amended March 20, 2009, effective immediately ; amended Dec. 12, 2012, eff. Jan. 1, 2013; amended Feb. 6, 2013, eff. immediately.

Amended Rule 607

Rule 607. Appeals by Poor Persons

(a) Appointment of Counsel. Upon ~~the imposition of a death sentence, or upon~~ the filing of a notice of appeal in any case in which the defendant has been found guilty of a felony or a Class A misdemeanor, or in which he has been found guilty of a lesser offense and sentenced to imprisonment or periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or in which a sentence of probation or conditional discharge has been revoked or the conditions attached to such a sentence modified and a sentence of imprisonment or periodic imprisonment imposed, and in cases in which the State appeals, the trial court shall determine whether the defendant is represented by counsel on appeal. If not so represented, and the court determines that the defendant is indigent and desires counsel on appeal, the court shall appoint counsel on appeal. ~~When a death sentence has been imposed, the court may appoint two attorneys, one of whom it shall designate as the responsible attorney and the other as assistant attorney for the appeal.~~ Compensation and reimbursement for expenses of appointed attorneys shall be as provided by statute.

(b) Report of Proceedings. In any case in which the defendant has been found guilty and sentenced to ~~death,~~ imprisonment, probation or conditional discharge, or periodic imprisonment, or to pay a fine, or in which a hearing has been held resulting in the revocation of, or modification of the conditions of, probation or conditional discharge, the defendant may petition the court in which he was convicted for a report of the proceedings at his trial or hearing. If the conduct on which the case was based was also the basis for a juvenile proceeding which was dismissed so that the case could proceed, the defendant may include in his petition a request for a report of proceedings in the juvenile proceeding. The petition shall be verified by the petitioner and shall state facts showing that he was at the time of his conviction, or at the time probation or conditional discharge was revoked or its conditions modified, and is at the time of filing the petition, without financial means with which to obtain the report of proceedings. If the judge who imposed sentence or entered the order revoking probation or conditional discharge or modifying the conditions, or in his absence any other judge of the court, finds that the defendant is without financial means with which to obtain the report of proceedings at his trial or hearing, he shall order the court reporting personnel as defined in Rule 46 to transcribe an original and copy of his notes. The original and one copy of the report shall be certified by the court reporting personnel and filed with the clerk of the trial court as provided below, without charge~~, and in a case in which a death sentence is imposed, the original and two copies shall be certified and filed, without charge~~. The clerk of the trial court shall then, upon written request of the defendant, release a copy of the report of proceedings to the defendant's attorney of record on appeal. In the event no attorney appears of record, the clerk shall, upon written request of the defendant, release the report of proceedings to the defendant, his guardian or custodian. ~~In a death sentence case, one copy of the report of proceedings shall be made a part of the duplicate~~

~~record on appeal as provided by these rules.~~ The court reporting personnel who prepare reports of proceedings pursuant to an order under this rule shall be paid pursuant to a schedule of charges approved by the public employer and employer representative for the court reporting personnel.

(c) Filing Fees Excused. If the defendant is represented by court-appointed counsel, the clerk of the reviewing court shall docket the appeal and accept papers for filing without the payment of fees.

(d) Copies of Briefs or Petitions for Leave to Appeal. If the defendant is represented by court-appointed counsel, the clerk of the Supreme Court shall accept for filing not less than 15 legible copies of briefs or petitions for leave to appeal or answers thereto; and the clerks of the Appellate Court shall accept for filing not less than 6 legible copies of briefs.

Amended effective June 23, 1967; amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971; amended June 28, 1974, effective September 1, 1974; amended September 29, 1978, effective November 1, 1978; amended July 30, 1979 and September 20, 1979, effective October 15, 1979; amended April 7, 1993, effective June 1, 1993; amended September 22, 1997, effective January 1, 1998; amended September 30, 2002, effective immediately; amended December 13, 2005, effective immediately; amended Feb. 6, 2013, eff. immediately.

Amended Rule 608

Rule 608. The Record on Appeal

(a) Designation and Contents. The clerk of the circuit court shall prepare the record on appeal upon the filing of a notice of appeal ~~and in all cases in which a death sentence is imposed. In a death sentence case, the clerk also shall prepare in the same manner as the original, in accordance with these rules, a duplicate of the record which shall be so designated and used by the parties in any collateral proceedings.~~ The record on appeal must contain the following:

(1) a cover sheet showing the title of the case;

(2) a certificate of the clerk showing the impaneling of the grand jury if the prosecution was commenced by indictment;

(3) the indictment, information, or complaint;

(4) a transcript of the proceedings at the defendant's arraignment and plea;

(5) all motions, transcript of motion proceedings, and orders entered thereon;

(6) all arrest warrants, search warrants, consent to search forms, eavesdropping orders, and any similar documents;

(7) a transcript of proceedings regarding waiver of counsel and waiver of jury

trial, if any;

(8) the report of proceedings, including opening statements by counsel, testimony offered at trial, and objections thereto, offers of proof, arguments and rulings thereon, the instructions offered and given, and the objections and rulings thereon, closing argument of counsel, communications from the jury during deliberations, and responses and supplemental instructions to the jury and objections, arguments and rulings thereon;

~~(9) in cases in which a sentence of death is imposed, a transcript of all proceedings regarding the selection of the jury, and in other cases the court reporter reporting personnel as defined in Rule 46 shall take full stenographic notes the record of the proceedings regarding the selection of the jury, but the notes record need not be transcribed unless a party designates that such proceedings be included in the record on appeal;~~

~~(10)~~ (9) exhibits offered at trial and sentencing, along with objections, offers of proof, arguments, and rulings thereon; except that physical and demonstrative evidence, other than photographs, which do not fit on a standard size record page shall not be included in the record on appeal unless ordered by a court upon motion of a party or upon the court's own motion;

~~(11)~~ (10) the verdict of the jury or finding of the court;

~~(12)~~ (11) post-trial motions, including motions for a new trial, motions in arrest of judgment, motions for judgment notwithstanding the verdict and the testimony, arguments and rulings thereon;

~~(13)~~ (12) a transcript of proceedings at sentencing, including the presentence investigation report, testimony offered and objections thereto, offers of proof, argument, and rulings thereon, arguments of counsel, and statements by the defendant and the court;

~~(14)~~ (13) the judgment and sentence; and

~~(15)~~ (14) the notice of appeal, if any.

Within 14 days after the notice of appeal is filed ~~or after a sentence of death is imposed~~ the appellant and the appellee may file a designation of additional portions of the circuit court record to be included in the record on appeal. Thereupon the clerk shall include those portions in the record on appeal. Additionally, upon motion of a party, the court may allow photographs of exhibits to be filed as a supplemental record on appeal, in lieu of the exhibits themselves, when such photographs accurately depict the exhibits themselves. There is no distinction between the common law record and the report of proceedings, for the purpose of determining what is properly before the reviewing court.

(b) Report of Proceedings; Time. The report of proceedings contains the testimony and exhibits, the rulings of the trial judge, and all other proceedings before the trial judge, unless the parties designate or stipulate for less. It shall be certified by court reporting personnel or the trial judge and shall be filed in the trial court within 49 days after the filing of the notice of appeal~~, or, if a death sentence is~~

~~imposed, the report of proceedings, and one copy for inclusion in the duplicate record, shall be certified and filed within 49 days from the date of the sentence~~. The report of proceedings shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by Rule 329.

(c) Time for Filing Record on Appeal. The record~~, and, in a case in which a death sentence is imposed, a duplicate,~~ shall be filed in the reviewing court within 63 days from the date the notice of appeal is filed in the trial court~~ or from the date of the imposition of the sentence of death~~. If more than one appellant appeals from the same judgment or from different judgments in the same cause to the same reviewing court, the trial court may prescribe the time for filing the record in the reviewing court, which shall not be more than 63 days from the date the last notice of appeal is filed. If the time for filing the report of proceedings has been extended, the record on appeal shall be filed within 14 days after the expiration of the extended time.

Amended October 21, 1969, effective January 1, 1970; amended September 29, 1978, effective November 1, 1978; amended July 30, 1979, effective October 15, 1979; amended February 19, 1982, effective April 1, 1982; amended July 3, 1986, effective August 1, 1986; amended September 22, 1997, effective January 1, 1998; amended December 13, 2005, effective immediately; amended Feb. 6, 2013, eff. immediately.

Amended Rule 609

Rule 609. Stays

~~**(a) Death Sentences.** A death sentence shall not be carried out until final order by the Supreme Court.~~

~~**(b)** **(a) Imprisonment or Confinement.** If an appeal is taken from a judgment following which the defendant is sentenced to imprisonment or periodic imprisonment, or to probation or conditional discharge conditioned upon periodic imprisonment, or from an order revoking or modifying the conditions attached to a sentence of probation or conditional discharge and imposing a sentence of imprisonment or periodic imprisonment, the defendant may be admitted to bail and the sentence or condition of imprisonment or periodic imprisonment stayed, with or without bond, by a judge of the trial or reviewing court. Upon motion showing good cause the reviewing court or a judge thereof may revoke the order of the trial court or order that the amount of bail be increased or decreased.

~~**(c)**~~ **(b) Other Cases.** On appeals in other cases the judgment or order may be stayed by a judge of the trial or reviewing court, with or without bond. Upon motion showing good cause the reviewing court or a judge thereof may revoke the order of the trial court or order that the amount of bail be increased or decreased.

Amended October 21, 1969, effective January 1, 1970; amended June 28, 1974, effective September 1, 1974; amended Feb. 6, 2013, eff. immediately.

Amended Rule 611

Rule 611. Oral Argument

(a) Sequence and Manner of Calling. The sequence and manner of calling cases for oral argument is governed by Rule 351~~, except that oral argument in cases in which a death sentence has been imposed shall be given priority over all other cases,~~ and priority shall be given to appeals in criminal cases over appeals in civil cases.

(b) Other Matters. In other respects oral argument is governed by Rule 352.

Amended Feb. 6, 2013, eff. immediately.

Amended Rule 612

Rule 612. Procedural Matters Which Are Governed by Civil Appeals Rules

The following civil appeals rules apply to criminal appeals insofar as appropriate:

(a) Dismissal of appeals by the trial court: Rule 309.

(b) Appeals to the Supreme Court: Rules 302(b), 302(c), 315, 316, 317, and 318.

(c) Procedure if no verbatim transcript is available and procedure for an agreed statement of facts: Rules 323(c) and (d).

(d) Preparation and certification of record on appeal by clerk: Rule 324. ~~(The certification in a death sentence case also shall make reference to the duplicate record.)~~

(e) Transmission of record on appeal or certificate in lieu of record: Rule 325. (If the defendant is represented by court-appointed counsel, no fees need be paid to the clerk of the trial court.~~ If a certificate in lieu of record is filed in a death sentence case, the duplicate record as provided by Rule 608 still must be timely filed in the Supreme Court.~~)

(f) Notice of filing: Rule 327.

(g) Amendment of the record on appeal: Rule 329. ~~(In a death sentence case, in addition to any supplemental record which may be filed pursuant to Rule 329, a duplicate supplemental record must be certified and filed.)~~

(h) Return of record on appeal: Rule 331. ~~(In a death sentence case, the duplicate record need not be returned to the clerk of the trial court.)~~

(i) Contents, form, length, number of copies, *etc.,* of briefs: Rule 341.

(j) Abstract: Rule 342.

(k) Times for filing and serving briefs: Rule 343.

(l) Briefs *amicus curiae*: Rule 345.

(m) Inspection of original exhibits: Rule 363.

(n) Appeal to wrong court: Rule 365.

(o) Rehearing in reviewing courts: Rule 367.

(p) Issuance, stay, and recall of mandates from reviewing court: Rule 368.

(q) Process in reviewing courts: Rule 370.

(r) Removing records from the reviewing court: Rule 372.

(s) Constructive date of filing papers in reviewing court: Rule 373.

Amended October 21, 1969, effective January 1, 1970; amended effective January 1, 1970, and July 1, 1971; amended July 30, 1979, effective October 15, 1979; amended September 22, 1997, effective January 1, 1998; amended May 24, 2006, effective September 1, 2006; amended July 27, 2006, effective September 1, 2006; amended Feb. 6, 2013, eff. immediately.

Amended Rule 613

Rule 613. Mandate of Reviewing Court

~~**(a) Death Cases.** If a death sentence is affirmed the Supreme Court shall set the time when the sentence shall be executed. A certified copy of the order of execution shall be authority to the warden of the penitentiary for execution of the sentence at the time therein specified. If the judgment is reversed or modified the Supreme Court shall direct the trial court to proceed in accordance with the mandate.~~

~~**(b)**~~ **(a)** ~~**Other Cases.**~~ In all ~~other~~ cases the reviewing court shall direct the appellate or trial court to proceed in accordance with the mandate.

~~**(c)**~~ **(b) Reversal When Appellant Is Serving Sentence.** If in a case on appeal the appellant is serving the sentence imposed in the trial court and the judgment is reversed and appellant ordered discharged, the clerk of the reviewing court shall at once mail to the imprisoning officer, certified mail, return receipt requested, a copy of the mandate of the reviewing court. It shall be the duty of the imprisoning officer to release appellant from custody forthwith upon receiving a certified copy of the mandate of the reviewing court. If appellant is serving the sentence and the judgment is reversed and the cause remanded to the trial court for further proceedings, the clerk of the reviewing court shall at once mail to the imprisoning officer, certified mail, return receipt requested, a copy of the mandate of the reviewing court. The imprisoning officer shall forthwith, upon receiving the certified copy of the mandate of the reviewing court, return appellant to the trial court to which the cause was remanded.

~~(d)~~ **(c) Credit for Time Served Pending Appeal.** In any case in which, pending appeal, an appellant serves any portion of the sentence imposed in the trial court and the judgment of the trial court is reversed by a reviewing court and a new trial ordered, the appellant shall be given credit in any subsequent sentence for the time served pending appeal.

Amended June 26, 1987, effective August 1, 1987; amended September 22, 1997, effective immediately; amended Feb. 6, 2013, eff. immediately.

Amended Rule 651

Rule 651. Appeals in Post-Conviction Proceedings

(a) Right of Appeal. An appeal from a final judgment of the circuit court in any post-conviction proceeding ~~involving a judgment imposing a sentence of death shall lie directly to the Supreme Court as a matter of right. All other appeals from such proceedings~~ shall lie to the Appellate Court in the district in which the circuit court is located.

(b) Notice to Petitioner of Adverse Judgment. Upon the entry of a judgment adverse to a petitioner in a post-conviction proceeding, the clerk of the trial court shall at once mail or deliver to the petitioner a notice in substantially the following form:

> "You are hereby notified that on _____ the court entered an order, a copy of which is enclosed herewith. You have a right to appeal~~. In the case of an appeal from a post-conviction proceeding involving a judgment imposing a sentence of death, the appeal is to the Illinois Supreme Court. In all other cases, the appeal is~~ to the Illinois Appellate Court in the district in which the circuit court is located. If you are indigent, you have a right to a transcript of the record of the post-conviction proceedings and to the appointment of counsel on appeal, both without cost to you. To preserve your right to appeal you must file a notice of appeal in the trial court within 30 days from the date the order was entered."

(c) Record for Indigents; Appointment of Counsel. Upon the timely filing of a notice of appeal in a post-conviction proceeding, if the trial court determines that the petitioner is indigent, it shall order that a transcript of the record of the post-conviction proceedings, including a transcript of the evidence, if any, be prepared and filed with the clerk of the court to which the appeal is taken and shall appoint counsel on appeal, both without cost to the petitioner. The record filed in that court shall contain a showing, which may be made by the certificate of petitioner's attorney, that the attorney has consulted with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, has examined the record of the proceedings at the trial, and has made any amendments to the petitions filed *pro se* that are necessary for an adequate

presentation of petitioner's contentions.

(d) Procedure. The procedure for an appeal in a post-conviction proceeding shall be in accordance with the rules governing criminal appeals, as near as may be.

Amended effective January 1, 1969; amended October 21, 1969, effective January 1, 1970; amended effective July 1, 1971; amended November 30, 1984, effective December 1, 1984; amended April 26, 2012, eff. immediately; amended Feb. 6, 2013, eff. immediately.

Amended Rule 701

Rule 701. General Qualifications

(a) Subject to the requirements contained in these rules, persons may be admitted or conditionally admitted to practice law in this State by the Supreme Court if they are at least 21 years of age, of good moral character and general fitness to practice law, and have satisfactorily completed examinations on academic qualification and professional responsibility as prescribed by the Board of Admissions to the Bar or have been licensed to practice law in another jurisdiction and have met the requirements of Rule 705.

(b) Any person so admitted to practice law in this State is privileged to practice in every court in Illinois. No court shall by rule or by practice abridge or deny this privilege by requiring the retaining of local counsel or the maintaining of a local office for the service of notices. ~~However, no person, except the Attorney General or the duly appointed or elected State's Attorney of the county of venue, may appear as lead or co-counsel for either the State or defense in a capital case unless he or she is a member of the Capital Litigation Trial Bar provided for in Rule 714.~~

Amended effective October 2, 1972; amended April 8, 1980, effective May 15, 1980; amended June 12, 1992, effective July 1, 1992; amended March 1, 2001. The amendment to paragraph (b) shall be effective one year after its adoption, and shall apply in capital cases filed by information or indictment on or after its effective date; amended October 2, 2006, effective July 1, 2007; amended Feb. 6, 2013, eff. immediately.

Repealed and Reserved Rule 714

Rule 714. ~~Capital Litigation Trial Bar~~ Reserved.

~~**(a)** Statement of Purpose. This rule is promulgated to insure that counsel who participate in capital cases possess the ability, knowledge and experience to do so in a competent and professional manner. To this end, the Supreme Court shall certify~~

duly licensed attorneys to serve as members of the Capital Litigation Trial Bar.

(b) Qualifications of Members of the Capital Litigation Trial Bar. Unless exempt under paragraph (c), or the Supreme Court determines that an attorney otherwise has the competence and ability to participate in a capital case pursuant to paragraph (d), trial counsel must meet the following minimum requirements:

Lead Counsel–Qualifications

(1) Be a member in good standing of the Illinois Bar or be admitted to the practice *pro hac vice*.;

(2) Be an experienced and active trial practitioner with at least five years of criminal litigation experience within the last seven years.;

(3) Have substantial familiarity with the ethics, practice, procedure and rules of the trial and reviewing courts of the State of Illinois; and

(4) Have prior experience as lead or co-counsel in no fewer than eight felony jury trials which were tried to completion, at least two of which were murder prosecutions and at least two trials must have been tried within the last seven years; and either

(i) have completed at least 12 hours of training in the preparation and trial of capital cases in a course approved by the Illinois Supreme Court, within two years prior to making application for admission; or

(ii) have substantial familiarity with and extensive experience in the use of expert witnesses, and forensic and medical evidence including, but not limited to, mental health, pathology and DNA profiling evidence.

Co-Counsel–Qualifications

(1) Be a member in good standing of the Illinois Bar or be admitted to the practice *pro hac vice*;

(2) Be an experienced and active trial practitioner with at least three years of criminal litigation experience within the last seven years;

(3) Have substantial familiarity with the ethics, practice, procedure and rules of the trial and reviewing courts of the State of Illinois; and

(4) Have prior experience as lead or co-counsel in no fewer than five felony jury trials which were tried to completion and at least one trial must have been tried within the last seven years; and either

(i) have completed at least 12 hours of training in the preparation and trial of capital cases in a course approved by the Illinois Supreme Court, within two years prior to making application for admission; or

(ii) have substantial familiarity with and extensive experience in the use of expert witnesses, and forensic and medical evidence including, but not limited to, mental health, pathology and DNA profiling evidence.

(c) The Attorney General or duly elected or appointed State's Attorney of each county of this state shall not be disqualified from prosecuting a capital case because he or she is not a member of the Capital Litigation Trial Bar.

(d) Waiver. If an attorney cannot meet one or more of the requirements set forth above, the Supreme Court may waive such requirement upon demonstration by the attorney that he or she, by reason of extensive criminal or civil litigation, appellate or postconviction experience or other exceptional qualifications, is capable of providing effective representation as lead or co-counsel in capital cases.

(e) Application for Admission to the Capital Litigation Trial Bar. In support of an application, an attorney shall submit to the Illinois Supreme Court a form approved by the Administrative Office of the Illinois Courts. It shall require the attorney to demonstrate that he or she has fully satisfied the requirements set forth above. The attorney shall also identify any requirement that he or she requests be waived and shall set forth in detail such criminal or civil litigation, appellate or postconviction experience or other exceptional qualifications that justify waiver. Applications for certification as lead counsel by attorneys previously certified as co-counsel shall be handled in the same manner as original applications for admission to the Capital Litigation Trial Bar.

(f) Creation of Capital Litigation Trial Bar Roster. The Administrative Office of the Illinois Courts shall review each application to determine that it is complete. All completed applications shall be delivered, within 30 days of their receipt, to the screening panel designated by the Supreme Court to consider such applications. Within 30 days of receipt of the application the screening panel shall designate those attorneys deemed qualified to represent parties in capital cases and shall report those findings to the Supreme Court. Upon concurrence by the Supreme Court, the court shall direct the Administrative Office to maintain and promulgate a roster of attorneys designated as members of the Capital Litigation Trial Bar. The roster shall indicate whether the attorney is certified as lead counsel or co-counsel.

(g) Continuing Legal Education. In addition to fulfilling the requirements for Capital Litigation Trial Bar membership, each member of the Capital Litigation Trial Bar shall complete at least 12 hours of training in the preparation and trial of capital cases in a course approved by the Illinois Supreme Court within each two-year period following admission to that bar. It shall be the responsibility of each Capital Litigation Trial Bar member to provide notice of completion within 60 days of such training to the Administrative Office of the Illinois Courts, either by individual correspondence or by certification provided by the agency or group conducting such training.

(h) Removal of Eligibility. The Supreme Court may remove from the roster of the Capital Litigation Trial Bar any attorney who, in the court's judgment, has not provided ethical, competent, and thorough representation. In addition, the court may suspend or remove from the Capital Litigation Trial Bar roster any attorney who has failed to meet the continuing legal education requirements of paragraph (g).

(i) Reinstatement. An attorney who has been suspended or removed from the roster of the Capital Litigation Trial Bar for failure to comply with the continuing legal education requirements of paragraph (g) may be reinstated by the Supreme Court. An attorney who seeks reinstatement must, within one year after receiving

~~notice of being removed or suspended from the roster of the Capital Litigation Trial Bar, complete the 12 hours of training as required by paragraph (g) and provide notice of compliance to the Administrative Office of the Illinois Courts. Such notice shall be in a form and manner approved by the Administrative Office of the Illinois Courts. To be reinstated, an attorney must have remained in compliance with all other qualifications for membership in the Capital Litigation Trial Bar. An attorney may seek reinstatement by this process only once.~~

~~Adopted March 1, 2001, effective immediately; amended October 1, 2004, effective January 1, 2005; amended April 4, 2007, effective immediately; amended December 8, 2010, effective January 1, 2011.~~

Amended Rule 795

Rule 795. Accreditation Standards and Hours

(a) Standards

Eligible CLE courses and activities shall satisfy the following standards:

(1) The course or activity must have significant intellectual, educational or practical content, and its primary objective must be to increase each participant's professional competence as an attorney.

(2) The course or activity must deal primarily with matters related to the practice of law.

(3) The course or activity must be offered by a provider having substantial, recent experience in offering CLE or demonstrated ability to organize and effectively present CLE. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.

(4) The course or activity itself must be conducted by an individual or group qualified by practical or academic experience. The course or activity, including the named advertised participants, must be conducted substantially as planned, subject to emergency withdrawals and alterations.

(5) Thorough, high quality, readable and carefully prepared written materials should be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the Board.

(6) Traditional CLE courses or activities shall be conducted in a physical setting conducive to learning. The course or activity may be presented by remote or satellite television transmission, telephone or videophone conference call, videotape, film, audio tape or over a computer network, so long as the Board approves the content and the provider, and finds that the method in question has interactivity as a key component. Such interactivity may be shown, for example,

by the opportunity for the viewers or listeners to ask questions of the course faculty, in person, via telephone, or on-line; or through the availability of a qualified commentator to answer questions directly, electronically, or in writing; or through computer links to relevant cases, statutes, law review articles, or other sources.

(7) The course or activity must consist of not less than one-half hour of actual instruction, unless the Board determines that a specific program of less than one-half hour warrants accreditation.

(8) A list of the names of all participants for each course or activity shall be maintained by the provider for a period of at least three years. The provider shall issue a certificate, in written or electronic form, to each participant evincing his or her attendance. Such lists and certificates shall state the number of CLE hours, including professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics CLE hours, earned at that course or activity.

(b) Accredited CLE Provider

The Board may extend presumptive approval to a provider for all of the CLE courses or activities presented by that provider each year that conform to paragraph (a)'s Standards (1) through (8), upon written application to be an "Accredited Continuing Legal Education Provider." Such accreditation shall constitute prior approval of all CLE courses offered by such providers. However, the Board may withhold accreditation or limit hours for any course found not to meet the standards, and may revoke accreditation for any organization which is found not to comply with standards. The Board shall assess an annual fee, over and above the fees assessed to the provider for each course, for the privilege of being an "Accredited Continuing Legal Education Provider."

(c) Accreditation of Individual Courses or Activities

(1) Any provider not included in paragraph (b) desiring advance accreditation of an individual course or other activity shall apply to the Board by submitting a required application form, the course advance accreditation fee set by the Board, and supporting documentation no less than 45 days prior to the date for which the course or activity is scheduled. Documentation shall include a statement of the provider's intention to comply with the accreditation standards of this Rule, the written materials distributed or to be distributed to participants at the course or activity, if available, or a detailed outline of the proposed course or activity and list of instructors, and such further information as the Board shall request. The Board staff will advise the applicant in writing within 30 days of the receipt of the completed application of its approval or disapproval.

(2) Providers denied approval of a course or activity shall promptly provide written notice of the Board's denial to all attorneys who requested Illinois MCLE credit for the course. Providers denied approval of a course or activity or individual attorneys who have attended such course or activity may request reconsideration of the Board's initial decision by filing a form approved by the Board no later than 30 days after the Board's initial decision. The Director shall

consider the request within 30 days of its receipt, and promptly notify the provider and/or the individual attorney. If the Director denies the request, the provider shall have 30 days from the date of that denial to submit an appeal to the Board for consideration at the next scheduled Board meeting. Submission of a request for reconsideration or an appeal does not stay any MCLE submission deadlines or fee payments.

(3) Providers who do not seek prior approval of their course or activity may apply for approval for the course or activity after its presentation by submitting an application provided by MCLE staff, the supporting documentation described above, and the accreditation fee set by the Board.

(4) A list of the names of participants shall be maintained by the provider for a period of three years. The provider shall issue a certificate, in written or electronic form, to each participant evincing his or her attendance. Such lists and certificates shall state the number of CLE hours, including professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics CLE hours, earned at that course or activity.

(5) An attorney may apply to the Illinois MCLE Board for accreditation of an individual out-of-state CLE course if the following provisions are satisfied: (i) the attorney participated in the course either in person or via live audio or video conference; (ii) (a) for a course held in person in a state with a comparable MCLE requirement, the course must be approved for MCLE credit by that state; or (b) for a course held in person in a state or the District of Columbia without a comparable MCLE requirement, the course must be approved for MCLE credit by at least one other state with a comparable MCLE requirement; or (c) for a course attended by live audio or video conference, the course must be approved for MCLE credit by at least one other state with a comparable MCLE requirement; and (iii) the course provider has chosen not to seek accreditation of the course for Illinois MCLE credit.

(d) Nontraditional Courses or Activities

In addition to traditional CLE courses, the following courses or activities will receive CLE credit:

(1) "In-House" Programs. Attendance at "in-house" seminars, courses, lectures or other CLE activity presented by law firms, corporate legal departments, governmental agencies or similar entities, either individually or in cooperation with other such entities, subject to the following conditions:

(i) The CLE course or activity must meet the rules and regulations for any other CLE provider, as applicable.

(ii) Specifically, the course or activity must have significant intellectual, educational or practical content, its primary objective must be to increase the participant's professional competence as an attorney, and it must deal primarily with matter related to the practice of law, professionalism, diversity issues, mental illness and addiction issues, civility or ethical obligations of attorneys. No credit will be afforded for discussions relating to the handling

of specific cases, or issues relating to the management of a specific law firm, corporate law department, governmental agency or similar entity.

(iii) The course or activity shall be submitted for approval on an individual course or activity basis rather than on a Presumptively Accredited Continuing Legal Education Provider basis.

(iv) The application, including all written materials or an abstract thereof, should be filed with the Board at least 30 days prior to the date on which the course or activity is to be held in order for a prior determination of acceptability to be made. However, prior approval by the Board shall not be required.

(v) Only courses or activities that have at least five attorney participants shall qualify for CLE credit. The attorneys need not be associated with the same firm, corporation or governmental agency.

(vi) Experienced attorneys must contribute to the teaching, and efforts should be made to achieve a balance of in-house and outside instructors.

(vii) The activity must be open to observation, without charge, by members of the Board or their designates.

(viii) The activity must be scheduled at a time and location so as to be free of interruptions from telephone calls and other office matters.

(ix) A list of the names of participants shall be maintained by the provider for a period of three years. The provider shall issue a certificate, in written or electronic form, to each participant evincing his or her attendance. Such lists and certificates shall state the number of CLE hours, including professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics CLE hours, earned at that activity.

(x) The Board may impose a fee, similar to the fees assessed on traditional CLE providers, on the provider of an in-house program for programs involving payments to the provider.

(2) Law School Courses. Attendance at J.D. or graduate level law courses offered by American Bar Association ("ABA") accredited law schools, subject to the following conditions:

(i) Credit ordinarily is given only for courses taken after admission to practice in Illinois, but the Board may approve giving credit for courses taken prior to admission to practice in Illinois if giving credit will advance CLE objectives.

(ii) Credit towards MCLE requirements shall be for the actual number of class hours attended, but the maximum number of credits that may be earned during any two-year reporting period by attending courses offered by ABA accredited law schools shall be the minimum number of CLE hours required by Rule s 794(a) and (d).

(iii) The attorney must comply with registration procedures of the law school, including the payment of tuition.

(iv) The course need not be taken for law school credit towards a degree; auditing a course is permitted. However, the attorney must comply with all law school rules for attendance, participation and examination, if any, to receive CLE credit.

(v) The law school shall give each attorney a written certification evincing that the attorney has complied with requirements for the course and attended sufficient classes to justify the awarding of course credit if the attorney were taking the course for credit.

(3) Bar Association Meetings. Attendance at bar association or professional association meetings at which substantive law, matters of practice, professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics are discussed, subject to the requirements for CLE credit defined in paragraphs (a)(1) through (a)(2) above. The bar or professional association shall maintain a list of the names of all attendees at each meeting for a period of three years and shall issue a certificate, in written or electronic form, to each participant evincing his or her attendance. Such lists and certificates shall state the number of CLE hours, including professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics CLE hours, earned at that meeting.

(4) Cross-Disciplinary Programs. Attendance at courses or activities that cross academic lines, such as accounting-tax seminars or medical-legal seminars, may be considered by the Board for full or partial credit. Purely nonlegal subjects, such as personal financial planning, shall not be counted towards CLE credit. Any mixed-audience courses or activities may receive credit only for sessions deemed appropriate for CLE purposes.

(5) Teaching Continuing Legal Education Courses. Teaching at CLE courses or activities during the two-year reporting term, subject to the following:

(i) Credit may be earned for teaching in an approved CLE course or activity. Presentations shall be counted at the full hour or fraction thereof for the initial presentation; a repeat presentation of the same material shall be counted at one-half; no further hours may be earned for additional presentations of the same material.

(ii) Time spent in preparation for a presentation at an approved CLE activity shall be counted at six times the actual presentation time.

(iii) Authorship or coauthorship of written materials for approved CLE activities shall qualify for CLE credit on the basis of actual preparation time, but subject to receiving no more than 10 hours of credit in any two-year reporting period.

(6) Part-Time Teaching of Law Courses. Teaching at an ABA-accredited law school, or teaching a law course at a university, college, or community college, subject to the following:

(i) Teaching credit may be earned for teaching law courses offered for

credit toward a degree at a law school accredited by the ABA, but only by lawyers who are not employed full-time by a law school. Full-time law teachers who choose to maintain their licenses to practice law are fully subject to the MCLE requirements established herein, and may not earn any credits by their ordinary teaching assignments. Presentations shall be counted at the full hour or fraction thereof for the initial presentation; a repeat presentation of the same material shall be counted at one-half; no further hours may be earned for additional presentations of the same material. Teaching credit may be earned by appearing as a guest instructor, moderator, or participant in a law school class for a presentation which meets the overall guidelines for CLE courses or activities, as well as for serving as a judge at a law school moot court argument. Time spent in preparation for an eligible law school activity shall be counted at three times the actual presentation time. Appearing as a guest speaker before a law school assembly or group shall not count toward CLE credit.

(ii) Teaching credit may be earned for teaching law courses at a university, college, or community college by lawyers who are not full-time teachers if the teaching involves significant intellectual, educational or practical content, such as a civil procedure course taught to paralegal students or a commercial law course taught to business students. Presentations shall be counted at the full hour or fraction thereof for the initial presentation; a repeat presentation of the same material shall be counted at one-half; no further hours may be earned for additional presentations of the same material.

(7) Legal Scholarship. Writing law books and law review articles, subject to the following:

(i) An attorney may earn credit for legal textbooks, casebooks, treatises and other scholarly legal books written by the attorney that are published during the two-year reporting period.

(ii) An attorney may earn credit for writing law-related articles in responsible legal journals or other legal sources, published during the two-year reporting period, that deal primarily with matters related to the practice of law, professionalism, diversity issues, mental illness and addiction issues, civility, or ethical obligations of attorneys. Republication of any article shall receive no additional CLE credits unless the author made substantial revisions or additions.

(iii) An attorney may earn credit towards MCLE requirements for the actual number of hours spent researching and writing, but the maximum number of credits that may be earned during any two-year reporting period on a single publication shall be one-half the minimum number of CLE hours required by Rule s 794(a) and (d). Credit is accrued when the eligible book or article is published, regardless whether the work in question was performed in the then-current two-year reporting period. To receive CLE

credit, the attorney shall maintain contemporaneous records evincing the number of hours spent on a publication.

(8) Pro Bono Training. Attendance at courses or activities designed to train lawyers who have agreed to provide pro bono services shall earn CLE credit to the same extent as other courses and seminars.

~~(9) Capital Litigation Trial Bar Training. Attendance at courses or activities pursuant to Supreme Court Rule 714(b) designed to train attorneys for certification for membership in the Capital Litigation Trial Bar shall earn CLE credit to the same extent as other courses and seminars.~~

~~(10)~~ (9) Bar Review Courses. Attendance at bar review courses before admission to the Illinois Bar shall not be used for CLE credit.

~~(11)~~ (10) Reading Legal Materials. No credit shall be earned by reading advance sheets, newspapers, law reviews, books, cases, statutes, newsletters or other such sources.

~~(12)~~ (11) Activity of Lawyer-to-Lawyer Mentoring. Lawyers completing a comprehensive year-long structured mentoring program, as either a mentor or mentee, may earn credit equal to the minimum professional responsibility credit during the two-year reporting period of completion, provided that the mentoring plan is preapproved by the Commission on Professionalism, the completion is attested to by both mentor and mentee, and completion occurs during the first three years of the mentee's practice in Illinois. For reporting periods ending in 2011 or earlier, the maximum number of professional responsibility credit hours shall be four. Beginning with the reporting periods ending on June 30 of either 2012 or 2013, in which 30 hours of CLE are required, the maximum number of credit hours available shall be six.

(e) Credit Hour Guidelines

Hours of CLE credit will be determined under the following guidelines:

(1) Sixty minutes shall equal one hour of credit. Partial credit shall be earned for qualified activities of less than 60 minutes duration.

(2) The following are not counted for credit: (i) coffee breaks; (ii) introductory and closing remarks; (iii) keynote speeches; (iv) lunches and dinners; (v) other breaks; and (vi) business meetings.

(3) Question and answer periods are counted toward credit.

(4) Lectures or panel discussions occurring during breakfast, luncheon, or dinner sessions of bar association committees may be awarded credit.

(5) Credits are determined by the following formula: Total minutes of approved activity *minus* minutes for breaks (as described in paragraph (e)(2)) *divided by* 60 *equals* maximum CLE credit allowed.

(6) Credits merely reflect the maximum that may be earned. Only actual attendance or participation earns credit.

(f) Financial Hardship Policy

The provider shall have available a financial hardship policy for attorneys who wish to attend its courses, but for whom the cost of such courses would be a financial hardship. Such policy may be in the form of scholarships, waivers of course fees, reduced course fees, or discounts. Upon request by the Board, the provider must produce the detailed financial hardship policy. The Board may require, on good cause shown, a provider to set aside without cost, or at reduced cost, a reasonable number of places in the course for those attorneys determined by the Board to have good cause to attend the course for reduced or no cost.

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